



Individualized Education Account (IEA) Program Proposed Rules

State Board of Education Workshop
October 22, 2015

IEA Program Timeline

- State Board **IEA Public Rule Making** Hearing
 - **When:** Nov. 12, 2015 at 1:00 p.m.
 - **Where:** Legislative Plaza, Room 12
- IEA program rules will be presented to the state board for **final reading** in January 2016.
- The IEA program will **go into effect** in the 2016-17 school year.
 - Student **application window** will open by **Aug. 2, 2016**.
 - Students will **enroll** in the program beginning **Jan. 1, 2017**.

Key Topics

- Clarity regarding **student eligibility**
- **Qualifications and approval process** for participating schools and providers
- **Definitions** for approved IEA expenses
- **Financial safeguards**
- **Appeals procedures**
- **Conflicts of interest**



Student Eligibility

Student Eligibility

- An “eligible student” must be a Tennessee resident who:
 - **has an IEP in effect at the time of request** for participation in the program; and
 - meets **at least one of the following** requirements:
 - was previously enrolled in a TN public school during the two semesters immediately preceding the semester in which the student receives an IEA; or
 - is attending a TN public school for the first time; or
 - received an IEA in the previous year.
- Also, the student must be identified with **any of the following disabilities**:
 - autism;
 - deaf-blindness;
 - hearing impairments;
 - intellectual disability;
 - orthopedic impairments;
 - traumatic brain injury; or
 - visual impairment.

Student Eligibility

- Prior two full semesters in enrollment means that the student was counted in the enrollment figures for the school district in months two, three, six and seven for purposes of calculating the basic education program (BEP).

Student Eligibility – Kindergarten Students

- Student has not previously attended a public K-12 school, but **is currently eligible to enroll in a kindergarten program** in a public school in Tennessee.
- Student **must have an active IEP**.
- **Student must register with the LEA** in which they reside for purposes of calculating the amount of IEA funding the student would be eligible to receive, **but would not have to attend a public school**.

Student Eligibility – Students New to TN

- Student **has not previously attended a school in Tennessee** (including public and nonpublic schools) during the two semesters immediately preceding the semester in which the student receives an IEA, and student is **eligible to enroll in a public school** in this state.
- Student **must have an IEP** (from their previous state).
- Student **must register with their resident** school district to generate funding, but do not have to attend classes.



Process to Enroll in the IEA Program

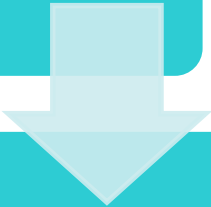
Waiving of IDEA Rights

To enroll in the IEA Program, parents must **waive** their child's **rights and services** pursuant to the **Individuals with Disabilities Education Act (IDEA)** at 20 U.S.C. §1414.


Enrollment in the IEA Program

Three-step process to enroll a student in the IEA Program:

Step 1: Parent submits IEA application to the TDOE by the deadline set by the TDOE.

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Step 2: TDOE determines student eligibility and notifies parent.

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Step 3: Parent signs IEA contract with the TDOE.

IEA Parent/ Student Contract

The parent must agree to:

- **Provide an education for the participating student** in at least the subjects of reading, grammar, mathematics, social studies, and science.
- Not to **enroll** the participating student in a **public school**.
- **Release the school district and the school from all obligations to educate the student.**

Parent/ Student Contract

The contract specifies:

- The anticipated participating school or participating provider(s);
- Acceptable uses of IEA funds;
- The responsibilities of parents and eligible students;
- The duties of the TDOE; *and*
- The financial institution to which the IEA funds shall be electronically transferred on a quarterly basis.

Parent/ Student Contract

- Parents must:
 - **complete** the contract, *and*
 - **submit** the contract to the TDOE **along with all information and supporting documentation** requested by the TDOE.
- Contract is **due** by the date set by the TDOE.
- Contract must be submitted to the TDOE **before the first quarterly IEA payment is disbursed.**
- Parents must **renew** the IEA contract every year.



Withdrawal, Transfer, & Removal from the IEA Program

Student Transfer

- Upon notice to the TDOE, the student's parent may **transfer** the student from **one participating nonpublic school to another** participating nonpublic school.
- The participating school shall **refund the tuition and fees** on a **prorated basis** based on the number of days the student was enrolled in the school.
 - The funds shall be returned to the student's IEA account.

Student Return to the LEA

- The parent shall **notify the TDOE** of the student's **withdrawal** from the IEA program and return to the LEA.
 - The TDOE shall close the participating student's IEA.
 - The funds from the IEA account shall be returned to the state treasurer to be placed in the BEP.
- If the **parent or student request**, in writing, an **evaluation for eligibility** pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an **initial evaluation** under 34 C.F.R. § 300.301.

Removing Students from the IEA Program

- The **TDOE may remove** any parent or qualified student from eligibility for an IEA if the parent or qualified student:
 - Fails to comply with the terms of the IEA agreement,
 - Fails to comply with the applicable laws, rules or procedures, and/ or
 - Misuses monies.
- A parent, or student who has reached age 18 or older, **may appeal** the TDOE's decision pursuant to the appeals procedures in the Rules.

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IEA Funding & Approved Uses of IEA Funds

IEA Funding Disbursement

- Parent will receive funding in **four, equal, quarterly payments** deposited into an IEA account.
 - The TDOE will set-up student's IEA accounts and determine the method for distributing funds to those accounts.
- After the initial quarterly payment to the IEA, parent **must submit receipts for all IEA funds** expended for each quarter by the date set by the TDOE **before the next IEA quarterly payment is disbursed.**

General Guidelines for Use of IEA Funds

- Funds roll over, so parents are not required to spend the entire sum each quarter.
- A portion of the funds must be used each quarter for the benefit of the IEA student and **overall spending must equal 90 percent of the annual award** at the close of each contract year.
 - If overall spending does not equal 90 percent at the close of the contract year, **the TDOE will subtract the difference from the quarterly payments in the next contract year.**
- After graduating from high school, or reaching 22 years of age, **unused funds in an IEA account** from prior years can be used in **the four subsequent years.**

Misuse of IEA Funds

- If the TDOE determines that IEA funds have been misspent, the TDOE shall **notify the parent**, and the **parent shall repay the misspent amount** in the manner and within the timeframe set by the TDOE.
- The **TDOE is authorized to freeze** and/or **withdraw funding** directly from the student's IEA account for reasons including, but not limited to:
 - fraud,
 - misuse of funds,
 - parent or student failure to comply with the terms of the state laws, rules, procedures or IEA agreement,
 - if the student returns to the LEA, or
 - if funds were deposited into the account in error.
- A parent may appeal the TDOE's decision pursuant to the appeals procedures in the Rules.

Conflict of Interest

- Use of IEA funds **must be for the sole benefit of the participating student** for which the IEA account is established.
- It is a conflict of interest for a **family member** of a participating student to:
 - Derive any **financial benefit** from the IEA program, or
 - Provide a **professional recommendation or approval** for a service.
- Family members of a participating student include a **step parent or member of an eligible student's household**.



Participating Schools & Providers

Participating Schools: Eligibility & Approval

- “Participating school” means a nonpublic school that is a **Category I, II, or III nonpublic school**.
- In order to participate in the IEA program, participating schools **must apply** to, and **be approved** by, the TDOE.
 - Schools must annually apply to **renew** their participation in the IEA program.
- In the **application**, schools must report:
 - The **maximum number** of IEA students the school has the capacity to enroll,
 - The school’s and student’s **fee schedules**, and
 - Whether the school has an **inclusive educational setting**:
 - Students with disabilities are educated with non-disabled children.
 - No more than 50 percent of the students in an individual classroom or setting are students with disabilities.

Participating Schools & Providers: Requirements

Participating schools and providers shall:

- **Verify each student's continued enrollment** and attendance by following the procedures posted on the TDOE's website.
- Annually provide to the parent a **written report of the student's academic progress**.
- **Administer statewide assessment** upon parent request.

Criminal Background Checks

- “Criminal background check” at a minimum shall include, a check of the following:
 - Tennessee’s **Sex Offender Registry** and the
 - **Abuse Registry** of the Tennessee Department of Health.
- **All persons** working on school grounds when students are present and/or any person providing services to participating students, must have undergone a **fingerprint based criminal history records check**.
 - The check must be conducted by the **TBI**.
 - All **participating schools and service providers** must maintain documentation that these background checks have been completed.

Participating Schools: Financial Viability

- Participating schools must:
 - **Demonstrate financial viability** to repay any funds that may be owed to the state, and
 - Verify the school has the ability to **pay an aggregate amount equal to the amount of the IEAs expected to be paid during the school year.**
 - The school may comply with this requirement by **filing a surety bond** payable to the state.
- The TDOE **may require** participating schools to submit a **financial audit** of the school conducted by a certified public accountant.

Removal of Participating Schools/ Providers

- **The TDOE may suspend or terminate a participating school or participating provider** if the school or provider has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the TDOE.
- If the TDOE suspends or terminates a school's or provider's participation, **the TDOE shall notify affected participating students and their parents of the decision.**
- If a participating school or provider is suspended or if a participating school or provider withdraws from the program, **affected participating students remain eligible to participate in the IEA program.**
- A participating school/ participating provider **may appeal** the TDOE's decision pursuant to the appeals procedures in the Rules.



Educational Therapy & Tutoring Services

Educational Therapy or Services

Proposed Definitions :

- **“Educational therapies”** means an individualized intervention and treatment plan designed to remediate learning problems through a combination of educational and therapeutic approaches.
- **“Participating provider”** means an individual or business that meets the requirements for accreditation or licensure established by the Tennessee Department of Health or TDOE and pursuant to the application and approval process created by the departments of education and health for participating providers.

Approval of Educational Therapy or Services

- If requested by the TDOE, a parent or participating provider shall provide **justification** for how a particular **educational therapy serves an educational purpose**.
- If the TDOE determines that a particular therapy does not serve an educational purpose for the student, the expense will be deemed an **unapproved expenditure**.

Tutoring Services

Tutoring services must be provided by **an individual tutor** that meets the requirements set by the TDOE or a **tutoring organization accredited** by one of the following:

- AdvancED, or any of its accreditation divisions,
- The Middle States Association of Colleges and Schools (MSA),
- The New England Association of Schools and Colleges (NEASC),
- The Western Association of Schools and Colleges (WASC), or
- The Council on Occupational Education (COE).



Other Approved IEA Expenses

Online Learning, Transportation, & Curriculum

- **Online learning programs or courses** must be provided by a Category III nonpublic school.
- **Curriculum** is defined as a complete course of study for a particular content-area or grade level, including any supplemental materials required by the curriculum.
- **“Fee for service transportation provider”** means a commercial transportation provider including a taxi or bus service.
 - It does not include private transportation by a parent or participating student.
 - Transportation fees can only be used for transportation to participating schools and providers (including approved tutors and therapists).

Computer Hardware

- Parents must receive **prior approval before purchasing computer hardware** using IEA funds.
- **“Computer hardware”** must be used for the student's educational needs, *and*
 - Be a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, *or*
 - Allows a student to access instruction or instructional content.
- **“Technological device”** is device used to increase, maintain, or improve the functional capabilities of a child with a disability.

Postsecondary Institutions

Eligible postsecondary institutions include:

- Community colleges,
- Colleges of applied technology,
- Universities of the University of Tennessee system or the board of regents system, or
- Private postsecondary institutions accredited by:
 - AdvancED, or any of its accreditation divisions,
 - The Middle States Association of Colleges and Schools (MSA),
 - The New England Association of Schools and Colleges (NEASC),
 - The Western Association of Schools and Colleges (WASC), or
 - The Council on Occupational Education (COE).



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Proposed Appeals Rules

Decisions that can be Appealed

Who can appeal and what decisions can be appealed?

- **Participating schools and providers** may appeal the denial, suspension, or termination of the entity's participation in the IEA program.
- A **parent** may appeal:
 - a denial of determination of eligibility,
 - a denial of a preauthorization request,
 - a denial of an expense paid for using IEA funds, and/ or
 - removal of the student from the IEA program.

Two Step Appeals Process

- **Step 1:** A **written appeal** must be submitted to the Commissioner of Education within **10 business days** of the denial, suspension, termination, and/or removal.
 - The appeal shall be reviewed by the Commissioner within **30 calendar days**.
 - The **Commissioner's decision** shall be rendered within **10 business days of the date of the review**.
- **Step 2:** An appeal of the Commissioner's decision in step 1 shall be **filed with the Commissioner** within **30 calendar days** and shall conform to the Uniform Administrative Procedure Act.

Questions?